

Property Access/Superfund: U.S. District Court (W.D. Washington) Addresses U.S. Environmental Protection Agency's Request to Undertake Remedial Action



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A United States District Court (Western District of Washington) addressed the United States Environmental Protection Agency's ("EPA") request for access to real property in King County, Washington to undertake certain remedial actions. See *United States of America v. Charles Pillon*, 2019 WL 2172839 (May 20, 2019).

The request for access involves real property owned by Defendant Charles Pillon ("Pillon").

The Order states that Pillon's property:

. . .contains, or has recently contained, many different kinds of waste, including vehicles, unlabeled containers, and chemical waste. (Id.) Over decades, the Property has been investigated more than 20 times by various law enforcement agencies for unpermitted activities as well as hazardous waste management violations . . .

In February, 2016, EPA conducted a one-day sampling event to identify and sample containers on the property potentially containing hazardous substances and areas of potentially contaminated soil. The agency is stated to have observed hundreds of unmarked and mislabeled containers that appeared to be leaking. Surface soil samples exceeded action levels for various hazardous constituents.

The Washington Department of Ecology asked EPA in July 2018 to undertake an emergency removal action at the property. Consent was obtained from Pillon to conduct a walk-through. Leaky containers were observed.

Pillon subsequently objected to EPA's involvement in the property. He also rejected a request for additional access.

EPA applied for an Administrative Warrant to access and clean up the property. A 30-day Administrative Warrant was granted. Further actions then included removal and processing of over 1,600 containers of chemicals and additional sampling was undertaken. Actionable levels of lead, cadmium and hydrocarbons are stated to have been detected in the soil. The 30-day cleanup was concluded but contaminated soil was stated to remain and the possibility of groundwater contamination was still deemed an issue.

EPA brought a Motion for Summary Judgment seeking access to the property to undertake:

- testing of soils in the areas of contamination to ensure that all soil contaminated above action levels have been removed
- installation of groundwater monitoring wells to monitor groundwater that has been, or may become contaminated

EPA would be present on the property for approximately two months.

The Court granted EPA's Motion for Summary Judgment for access.

The Comprehensive Environmental Response and Liability Act ("CERCLA or Superfund") grants the agency broad powers to clean up sites where it has "a reasonable basis to believe there may be a release or threat of release of hazardous substances." The broad definition of release is cited along with the various ways the agency may access a site.

The Court states that if EPA cannot obtain consent it can gain access through a Court Order if the following is demonstrated:

1. The property is of the type that the government is allowed to enter under the statute
2. The government has a reasonable basis to believe there may be a release or threatened release of hazardous substances
3. The government has first requested, and been unsuccessful in obtaining the property owner's consent
4. The government must seek entry only to perform response actions covered by the statute

The Court applied each of these criteria to Pillon's property and concludes each has been met.

As a result, the Court provides EPA authority to enter the property during reasonable business hours and to respond to hazardous substances, pollutants, contaminants located on or under the property owned and controlled by Pillon. The specific activities it may undertake, along with sampling protocols, notifications to Pillon, etc., are addressed.

A copy of the Order can be downloaded [here](#).